



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Paula Clark, Director, and Cyndi Darling, Project Analyst, of Division of Solid Waste Management, Bureau of Remediation and Waste Management

RE: Denial of Appeal filed by Edward S. Spencer of Maine Hazardous Waste, Septage and Solid Waste Management Act Approval #S-020700-W5-AU-N for partial approval of a Determination of Public Benefit for the Juniper Ridge Landfill Expansion in Old Town

DATE: July 19, 2012

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Statutory and Regulatory References: 38 M.R.S.A. §1310-N(3-A)(B) and 38 M.R.S.A. §1310-AA provide the statutory framework for and application for a public benefit determination (PBD), and any appeals thereof. The Board may look to the *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (last amended April 1, 2003) for guidance with respect to processing of applications and appeals of Commissioner licensing decisions although Chapter 2 of the Board rules do not strictly apply to PBDs pursuant to Section 2.B.

Location: The project site is located between Route 16 (Bennoch Road) and Route 43 (West Old Town Road) in Old Town, Maine. Access to the landfill is from Bennoch Road.

Procedural History and Project Description: The State of Maine owns the Juniper Ridge Landfill (JRL) in Old Town, Maine. At the time the PBD application was filed, the State Planning Office was responsible for oversight of the JRL through the Operating Services Agreement (OSA) between SPO and Casella Waste Systems, Inc. (Casella), the selected operator of the landfill. The responsibilities associated with ownership of JRL are in the process of being transferred to the Bureau of General Services. Under the terms of the OSA, Casella is required to fund all costs associated with the development of capacity, and operations and closure activities at the landfill, including the submission of an application to expand the landfill. NEWSME Landfill Operations, LLC, is a subsidiary of Casella formed to operate JRL.

In the first regular session of the 124th Legislature, the PBD statute (38 M.R.S.A. §1310-AA) was amended to extend applicability to new state-owned solid waste disposal facilities, or expansions to existing state-owned solid waste disposal facilities. On September 15, 2011, the applicant filed an application for a determination of public benefit. The Department held a

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public meeting on October 24, 2011, and also accepted written comments on the application throughout its processing period. The Department received numerous oral and written comments on the application; most of the comments were from residents in the vicinity of the landfill.

On January 31, 2012, the Commissioner issued partial approval of the JRL Expansion PBD application. The applicant requested the Commissioner determine the 21.9 million cubic yards of capacity proposed to be provided by the landfill expansion was needed to meet immediate, short-term or long-term solid waste disposal capacity needs for Maine. The partial approval issued by the Commissioner found, in part, that the Department's review of capacity needs indicated Maine's long-term (10 years) solid waste disposal capacity needs could be met if the applicant obtained all licenses needed for an expansion of 9.35 million cubic yards.

Edward S. Spencer filed an appeal on February 29, 2012. The Board ruled on May 3, 2012 that Mr. Spencer did establish that he is an aggrieved person for the purpose of bringing an appeal of this PBD.

Discussion: 38 M.R.S.A. §1310-N(3-A)(B) provides that for publicly owned solid waste disposal facilities such as JRL, "the commissioner shall make the determination of public benefit in accordance with section 1310-AA, and the commissioner's determination under that section is not subject to review by the department or the board as part of the licensing process under this section." 38 M.R.S.A. §1310-AA provides that "the commissioner's decisions under this section may be appealed to the board, but the board is not authorized to assume jurisdiction of a decision under this section." In brief, statute provides that a Commissioner's determination of public benefit may be appealed to the Board; however, following final agency action on a PBD, the PBD cannot be challenged during the subsequent licensing proceeding for the construction of a landfill or a landfill expansion.

Section 24.B(1) of 06-096 CMR 2 provides that "an aggrieved person may appeal to the Board for review of the Commissioner's decision". Section 24.B(2) states that written notice of the appeal "must include, but need not be limited to, evidence demonstrating the appellant's standing as an aggrieved person, the findings, conclusions or conditions objected to or believed to be in error, the basis of the objections or challenge, and the remedy sought. If the appellant is requesting that supplemental evidence be included in the record and considered by the Board, such a request, with the proposed supplemental evidence, must be submitted with the appeal."

The appellant requests that the Board reverse the Commissioner's decision on the PBD application, in order to "allow for a much clearer and more comprehensive appraisal of Maine's waste disposal capacity needs".

The Department responds that the Commissioner's decision was based on a thorough review by the Department of: the data available for existing licensed solid waste disposal capacity (both available capacity and licensed but not yet constructed), and for the volume of solid waste generated in Maine; the estimates of disposal capacity needed under various generation scenarios; the degree of impact that legislative or regulatory changes under consideration or

newly effective are likely to have on solid waste disposal; and the role JRL plays in local, regional and state-wide solid waste management. In summary, the Commissioner concluded that the entire 21.9 million cubic yards of solid waste disposal capacity proposed was more than was currently needed to ensure solid waste disposal capacity for Maine wastes over the long term, and instead determined that an expansion of 9.35 million cubic yards would meet the state's capacity needs in the long term. As a result, the applicant may submit a technical application for expansion of JRL that would provide no more than 9.35 million cubic yards of capacity.

Department Recommendation: The Department recommends that the Board affirm the Commissioner's decision to issue partial approval of the PBD application for expansion of JRL (Department order #S-020700-W5-AU-N).

Estimated Time of Presentation: 2 hours

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